

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NICHOLAS KORMYLO, M.D.;
KIMBERLY KORMYLO; and
BRYCE KORMYLO, by and through
his guardian ad litem KIMBERLY
KORMYLO,

Plaintiffs,

v.
FOREVER RESORTS, LLC,
dba CALVILLE BAY RESORT
& MARINA; and KENNETH
WILLIAMS,

Defendants.

FOREVER RESORTS, LLC,
dba CALVILLE BAY RESORT
& MARINA; and KENNETH
WILLIAMS,

Third-Party Plaintiffs,

v.
SCOTT PETERSON NEELY,

Third-Party Defendant.

CASE NO. 13cv511 JM (WVG)
ORDER APPOINTING
GUARDIAN AD LITEM FOR
THIRD-PARTY DEFENDANT
TAYLOR HETHERINGTON

1 FOREVER RESORTS, LLC,
2 dba CALVILLE BAY RESORT
& MARINA; and KENNETH
3 WILLIAMS,

4 v.
5 Third-Party Plaintiffs,

6 BOY SCOUTS OF AMERICA;
7 BOY SCOUTS OF AMERICA
8 SAN DIEGO-IMPERIAL COUNCIL;
9 MARK ALLEN; WILLIAM DALE;
10 KELLY GARTON; TAYLOR
HETHERINGTON; ROBERT
JAFEK; JAMES MICHAEL
LEDAKIS; ROGER MCCLOSKEY;
ERIC JONATHAN SANFORD;
ROBERT SHUMWAY; DAVID
TAYLOR; and CHRIS WADDELL,

11 Third-Party Defendants.

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13 On August 25, 2014, Forever Resorts, LLC, and Kenneth Williams filed
14 a first amended third-party complaint against various third-party defendants,
15 including Taylor Hetherington. (Doc. No. 58.) On October 10, 2014, Thomas
16 Max Hetherington II filed an ex parte application to be appointed as Taylor
17 Hetherington's guardian ad litem. (Doc. No. 87.) The attached declaration states
18 that Thomas is Taylor's father and that Taylor was born on May 27, 1986. Taylor
19 is, therefore, 28 years old. The declaration states, however, that Taylor "was born
20 with severe brain damage resulting in serious developmental disabilities severely
21 affecting, among many things, his ability to communicate and interact with others,"
22 and that Taylor "has only the mental capacity of a teenager." (Doc. No. 87-1 at
23 2-3.) The application states further that "Taylor has no legal or general guardian."
24 (Doc. No. 87 at 2.) The application is unopposed.

25 Pursuant to Federal Rule of Civil Procedure 17(c)(2), "[a] minor or
26 incompetent person who does not have a duly appointed representative may sue
27 . . . by a guardian ad litem. The court must appoint a guardian ad litem—or issue
28 another appropriate order—to protect a minor or incompetent person who is

1 unrepresented in an action.” The court has an obligation to consider whether
2 such a person is adequately protected and “broad discretion” whether to appoint a
3 guardian. United States v. 30.64 Acres of Land, 795 F.2d 796, 805 (9th Cir. 1986).

4 Having reviewed the application, including the declaration of Thomas Max
5 Hetherington II, the court finds based on the uncontested evidence that Third-
6 Party Defendant Taylor Hetherington is incompetent to act on his own behalf in
7 this action. As such, Third-Party Defendant Taylor Hetherington lacks capacity
8 to be sued in the absence of the guardianship ordered herein.

9 Good cause appearing therefor, Thomas Max Hetherington II is appointed
10 guardian ad litem for Taylor Hetherington.

11 IT IS SO ORDERED.

12 DATED: November 4, 2014



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14 Hon. Jeffrey T. Miller
United States District Judge
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